IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10532 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMRATHDAN DAJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR MUKUL SINHA for Petitioner No. 1-2,4

MR IS SUPEHIA for Petitioner No. 1,6-7

DELETED for Petitioner No. 3,5,8

Mr.Joshi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/07/2001

C.A.V. JUDGEMENT

1. By way of this petition, the petitioners are praying for necessary orders against the respondents, for directing them to treat the petitioners, for promotion / posting, on the same terms and conditions as are issued to the other candidates who have been selected for the

posts of Police Sub Inspector along with the petitioners, treating them all equally for all purposes.

2. The facts and controversy involved in the petition are summarized as under :-

The petitioners were originally appointed as Police Constables in the State Service. The Home Department of the State Government issued a Resolution on 3.11.1990, by which in order to see that the State Crime Investigation Department (Intelligence Bureau) becomes more effective and officer oriented and also with a view to seeing that the staff working in the State C.I.D. (IB) gets more incentive, the Government was pleased to reorganise the State CID (IB) and redesignate various posts. So far as the post of Head Constable is concerned, the same is mentioned at serial No.7 in the said Resolution and certain posts of Head Constable were redesignated as Assistant Intelligence Officer (of Head Constable's rank). It is provided in Clause 3 of the said Resolution that the promotion given as per paragraph 2 of the Resolution shall be only for the period of service in the State CID (IB) and shall be treated as purely fortuitous when the Officer reverts to his parent cadre. On promotion, the pay in the higher pay scale should be fixed as per the relevant rules in the B.C.S.R.

Thereafter, by an order dated 17.8.1991, the Director General and Inspector General of Police, Gujarat State, Ahmedabad, passed an order, by which one step promotion was given to certain constables on the post of Assistant Intelligence Officer (equivalent to Head Constable) in the pay scale of Rs.975-1660. It is mentioned in the said order that the designation of the Head Constable is now redesignated as Assistant Intelligence Officer. According to the said order, 127 constables were promoted to the post of Assistant Intelligence Officer, which was treated as equivalent to Head Constable. It is also mentioned in the said order that such promotion will be absolutely temporary. Accordingly, the petitioners were promoted by the said Circular at Annexure `B' to the post of Assistant Intelligence Officer (equivalent to Head Constable).

3. Initially, this petition was filed by 8 petitioners. However, names of original petitioner Nos. 3, 5 and 8 were subsequently deleted, as they were promoted on the post of P.S.I. By Notification dated 7.12.1991, which is at Annexure `D' to the petition, rules governing recruitment to the post of Assistant Intelligence Officer (equivalent to Head Constable Grade

I) in the State Crime Investigation Department were published. In paragraph 2, it is provided that appointment to the post of Assistant Intelligence Officer (equivalent to Head Constable Grade I) in the State Crime Investigation Department (Intelligence Bureau) Class-III shall be made by transferring persons from amongst the Head Constables Grade-II (Armed Branch or Unarmed Branch or Wireless Branch) and constables working in the Gujarat Subordinate Service Class-III Police Department to the State Crime Investigation Department (Intelligence Bureau). It is also provided in paragraph 3 that appointment mentioned in paragraph 2 shall be made on merits and suitability.

By another Resolution dated 15.2.1995, which is at Annexure `E' to the petition, the pay of the A.I.O. was fixed as that of the Head Constable Grade I. As per the said order at Annexure `E', the pay scale Rs.975-1660 of Assistant Intelligence Officer (equivalent to Head Constable Grade II) was ordered to be revised as per the Resolution of the Home Department of the State of Gujarat and it was decided that their pay should be revised to Rs.1320-2040, treating as a promotion in the cadre of Head Constable Grade I. Respondent No.2 therafter invited applications from the Head Constables who were in service as Head Constables since last five years and who have not crossed the age limit of 54 years for the purpose of allowing them to appear at the examination which was to be held for appointment to the post of Police Sub Inspector. The said letter / circular is produced at Annexure `F'. It is the say of the petitioners that since they were serving as A.S.I., which is equivalent to Head Constable's Grade and since in the said post of A.S.I., their experience was more than five years, they were eligible to be considered for promotion to the post of P.S.I. and accordingly, they also applied for such appointment. It is not in dispute that their applications were sent to the concerned authorities and subsequently, the petitioners were permitted to appear in the examination.

4. The Additional Director General of Police, Computer, Gandhinagar, addressed a letter to the Additional Director General, C.I.D. (I.B.) on 1.10.1997, asking him to submit information regarding eligible candidates, who were in the cadre of Head Constables (Unarmed), and stating that such Head Constables may be informed that they are given permission to appear in the examination. Therafter, by another letter at Annexure `H', dated 17.10.1997, the petitioners were informed that they are permitted to appear at the examination and they

were also informed about the examination centre. There is a reference about 16 candidates in the said letter at Annexure `H', which includes the names of the present petitioners also. It is not in dispute that the petitioners appeared in the said written examination and were declared successful in the same. One Mr.R.D. Thamne, Chairman and Director General of Police, Computer-cum-State Crime Record Bureau, Gujarat State, Gandhinagar, sent the names of the selected candidates to the concerned office, with a request that the selected candidates may be informed accordingly. At the bottom of the said letter, it is also mentioned that the copy of the same is also given to the Additional Director General of Police, I.C., Gujarat State and D.S.P. Office. Accordingly, the petitioners have cleared the written examination successfully and thereafter, letters were issued to them for appearing for personal interview. It is averred in the petition that as per their information, the petitioners came out successful in the oral interview also. Thereafter, on the basis of such written and oral examinations, the Department, by its order dated 24.11.1998, gave posting order to 342 selected candidates. It is the say of the petitioners that the said 342 candidates appeared along with the petitioners in the written and oral tests. However, the petitioners were left out from the benefit of getting such posting orders and the selected candidates were also sent for training of P.S.I. and the petitioners were not sent for such training of P.S.I. On enquiry, some of the petitioners came to know that they were deprived of such posting orders on the ground that they were not eligible for appointment on the post of P.S.I. as they cannot be treated as Head Constable in the State Service and that their service as A.I.O. cannot be considered as experience as a Head Constable, though, of course, there was no written communication in this behalf.

It seems that, initially, the petitioners filed Special Civil Application No.10188 of 1998. However, this Court, vide its order dated 30.11.1998, rejected the same on the ground that the petitioners had approached the Court without making a formal representation and that there was merely an assertion in the petition that they came to know that they were not selected on a particular ground. Therafter, the petitioners made a representation to the authority, which was, subsequently, turned down on 5.12.1998. The said order rejecting their representation is produced at page 58 as Annexure `N'. It is stated in the said order that as per the provisions of Rule 165 of the Gujarat Police Manual, those unarmed Police Head Constables, who are not above 54 years of age on

31.12.1997 and those who have completed five years will be treated as eligible. It is stated in the said order that those Unarmed Head Constables who continued for five years in the State Cadre only will be eligible for appearing at the examination. It is also further stated that those who have got the benefit of one step promotion in C.I.D. as I.O./A.I.O. and such other categories of employees mentioned in the said order, like Wireless and Radio operators, are not eligible to appear at the examination for promotion to the post of P.S.I. It is also stated that since the duty which is being performed by them is of a limited nature and since they have not got practical experience in performing duties like investigation of crime, maintenance of law and order, etc. they may not be very useful in Unarmed Force. One Mr.C.P. Singh, Director General and Inspector General of Police, passed the said order. It was also mentioned in the said order that the predecessor of Mr.Singh (who passed the earlier order) has committed mistake in allowing the petitioners to appear in the examination. Accordingly, by the aforesaid order, the representation of the petitioners was rejected, with detailed reasoning, as mentioned in the said order. The petitioners, therefore, ultimately challenged the said action by way of filing the present Special Civil Application.

5. It is the say of the petitioners that for all purposes, the petitioners are Head Constables and accordingly, they were eligible for appearing at the examination for promotion to the post of P.S.I. and, therefore, permission was rightly given to them by the earlier Officer and they have come out successful in both the written and oral tests. It is also the say of the petitioners that the post of A.I.O., which they were holding, was treated as equivalent to Head Constable, and on the said post of A.I.O., they have served for more than five yeas and accordingly, they were eligible for appearing at the examination for promotion to the post of P.S.I. By amendment in the petition, paragraph 14-A was added and it was averred in the said paragraph that the petitioners were sent on deputation on one-step promotion basis as Head Constables equivalent to A.I.O., initially for a period of three years. However, subsequently, by virtue of Notification dated 7.12.1991, they were deemed to have been appointed as A.I.O. on permanent basis. It is stated that the fact that they were still continued as A.I.O. after the period of three years from 17.8.1991 goes to show that they were deemed to have been appointed on permanent basis. It is also averred that Rule 165 of the Gujarat Police Manual makes no distinction between temporary or permanent Head Constables or Head Constables

on deputation. It is also further stated that the petitioners, having been found to be more suitable on scrutiny, were, ultimately, considered for promotion to the post of A.I.O. (equivalent to Head Constable) and at that time, they were selected on merit and accordingly, were appointed as A.I.O. The petitioners have also annexed Annexure `O' dated 20.11.1990, wherein it is mentioned that on completion of five years on deputation as a Head Constable, one can appear in departmental examination for promotion to the post of P.S.I. It is the say of the petitioners that they having been found more suitable and having successfully come out in the suitability test and having completed five years' continuous service on the aforesaid post of A.I.O., which is recognised as equivalent to Head Constable, they were eligible to be promoted to the post of P.S.I. It is also averred by way of amendment in the petition that assuming that the petitioners are only constables and not Head Constables, then also, persons holding lower ranks are eligible for appearing in the examination for promotion to the post of P.S.I. and in that way, they were eligible to appear in the said examination. Reference to Rule 61(1) of the Gujarat Police Manual is made in this behalf to substantiate the aforesaid say. It is also stated that the interpretation of the earlier Director General and Inspector General was absolutely legal and proper and that the respondent had no authority to review his order and to take a contrary view.

6. This Court (Coram : R.M. Doshit, J.), while admitting the matter on 9.2.1999 passed the following order :-

> " ... ...
>
> Therefore, by way of interim relief, it is directed that the respondents shall permit the petitioners Nos.3, 6 and 8, i.e. those who have been promoted as head constable in their parent department, to take necessary training and if otherwise found fit for promotion, shall promote them as sub inspectors. It is, however, clarified that the promotion given to the petitioners nos. 3, 6 and 8 pursuant to this order shall be ad-hoc and subject to the final order that may be made by this Court. Further, said petitioners nos. 3, 6 and 8 shall not be entitled to further promotion from the post of sub inspector, if they are so promoted, on the basis of

such promotion without express order of this Court. Interim relief to rest of the petitioners is refused.

... ..."

Accordingly, original petitioner Nos. 3, 6 and 8 were permitted to go for training, because, it seems that, in the meanwhile, they were promoted as Police Sub Inspector in the parent Department. The remaining petitioners, who were not permitted to appear in the written examination, filed Letters Patent Appeal No.272 of 1999 before this Court and the said Letters Patent Appeal was allowed and it was found by the Division Bench that all the appellants were permitted to appear in the written test as well as oral examination and they have successfully undergone the same. On the aforesaid basis, while allowing the Letters Patent Appeal, the Division Bench permitted the remaining petitioners also to undergo the training. The Order of the Division Bench in Letters Patent Appeal No.272 of 1999 is reproduced as under :-

" ... ...

9. From the above portion, it is clear that interim relief was granted in favour of petitioner Nos. 3, 6 and 8 and they were ordered to be sent for training subject to the final order which may be made by the Court. It was also clarified that they will not be entitled for further promotion from the post of Sub-Inspector even if they were promoted without express order of the Court. The interim relief to the rest was refused by the learned single Judge.

10. At that stage, a prayer was made on behalf of the AGP to stay the operation of the order and the learned Single Judge granted stay for a period of five days from the date of the order. It is stated by Mr.Hasurkar that the above order is not challenged so far by the State Government.

11. Out of the remaining five petitioners, four appellants, i.e. original petitioner nos. 1, 2, 4 & 5 have filed present LPA. Mr.Mukul Sinha, learned Counsel for the appellants contended that when the petition was admitted, obviously

the learned Single Judge was of the view that prima facie case was made out. Rule was, therefore, issued. Regarding interim relief, the Counsel submitted that interim relief was granted by the learned Single Judge in favour of petitioner nos. 3, 6 & 8. Though nothing was stated in the impugned order as to why interim relief was refused qua present appellants were probably in view of the fact that the appellants were not Head Constables in the parent department and were granted accelerated promotion in CID (IB). Mr.Sinha submitted that if under the relevant rules both the conditions were required to be satisfied for the purpose of treating a person eligible to promotion to the post of Police Sub Inspector; i.e. (1) Promotion as Head Constable and (2) Completion of five years of service, they were not fulfilled even by petitioner nos. 3, 6 & 8. Yet the learned Single Judge granted interim relief in their favour considering a letter - communication Annexure "O" dated 26.11.90. In the said Annexure, it was stated that armed-unarmed police constables - Head Constables will be given accelerated promotion in one step and that if they would complete a period of five years on deputation, they will be permitted to appear in the departmental examination for Sub Inspector of Police. Admittedly, the petitioner nos. 3, 6 & 8 have not completed 5 years after they were permitted as Head Constables. In fact, looking to the affidavit in reply of A.K. Bhargava, Additional DGP (Administration), in Para 5 & 6, the petitioner no.3 was promoted as Head Constable on 9.8.95 (wrongly shown as 9.8.98) and Mohammed Hanif Vora petitioner no.8 on 24.11.95. Thus neither of them had completed five years. Regarding petitioner no.6, it was stated that he was originally appointed as Constable. However, at his own will, he got his cadre changed to that of Wireless Operator and got enhanced promotion for better prospects. The learned Single Judge was of the view that though they had not completed five years on promotional post of Head Constables, they should be considered

eligible for promotional post of PSI and can be sent for training by invoking the doctrine of estoppel as reflected in a communication dated 26.12.90. The learned Counsel submitted that the same principle would apply to the case of the appellants also.

12. In our opinion, the contention is well founded. It is true that the present appellants got accelerated promotion in view of their showing willingness to go to CID (IB) but Annexure "O" is clear and provides for accelerated promotion as Head Constables and after completion of five years as Head Constable on deputation, they can be permitted to appear at the departmental examination conducted for the post of Sub Inspector of Police. As stated in the petition, all the appellants were permitted to appear at the written test as well as oral test and they have successfully undergone them. In this view of the matter, in our view, the learned single Judge, by refusing interim relief in favour of the appellants, has committed an error of law which requires to be corrected.

13. In the result, the appeal is allowed and the respondent authorities are directed to extend all the benefits which are ordered to be extended by the learned single Judge in para 5 of the order dated 9.2.99. It is, however, clarified that the said order would be subject to the final outcome of Special Civil Application No.10532 of 1988. It was stated that the training has already commenced and it may not be proper to permit the appellants to join such training at the mid-way. It would also not be appropriate to direct the authorities to allow the appellants to give incomplete training. We see substance in the submission. It is, therefore, directed that the respondents will permit the appellants to impart such training in the next batch.

14. It is open to the authorities to request the learned single Judge to take

> the main matter for final disposal in view of urgency and important question which is agitated. As and when such a prayer would be made the learned Single Judge would consider the same and take appropriate action. The appeal is accordingly allowed to the extent indicated above. There shall be no order as to costs.
>
> ... ..."

Accordingly, all the petitioners have undergone training which is required for the post of P.S.I.

7. Mr.Sinha, learned Advocate for the petitioners, argued that absolutely on irrelevant ground, respondent No.2 denied the claim of the petitioners for promotion to the post of P.S.I. It is submitted that, subsequently, original petitioner No.3, Sabbir Mohmmad Islamkhan, who was not at the relevant time serving as a Head Constable Grade I, was still promoted to the post of P.S.I. on the basis of his passing written and oral examinations. He submitted that even though those candidates who have not completed five years' service as Police Head Constable are promoted to the post of P.S.I., there is no reason why the petitioners should not have been given similar treatment. Mr.Sinha further submitted that so far as A.I.O. is concerned, it is equivalent to Head Constable and accordingly, they were rightly permitted by the predecessor of the respondents to appear in the written and oral examinations. According to Mr.Sinha, it was not open for the respondents to review the predecessor's decision, especially when the petitioners were not only permitted, but they appeared in the written and oral tests and successfully cleared them.

Mr.Sinha also further submitted that some of the Head Constables in the State cadre had filed Special Civil Application No.5199 of 1998, challenging the decision, by which the petitioners were allowed to appear in the written and oral test on the ground that the petitioners are not having experience of Head Constable on the Parent Department, i.e. in the State Service itself, and, therefore, they were not eligible for promotion to the post of P.S.I. This Court (Coram : N.N. Mathur, J.), by his order dated 6.9.1999, rejected the said petition by observing as under :-

> " ... ...

Heard the learned Advocate for the petitioners.

The petitioners have challenged the selection of respondents No.3 to 11 on the post of Police Sub-Inspector on the ground that they were Constables in their original cadre and they were on deputation on the basis of one step promotion as Head Constable in CID (I.B.) branch, and, therefore, they lack their minimum qualification for promotion on the post of Police Sub-Inspector. In my view, there is no substance in the contention raised by the petitioners. The requisite qualification is certain experience on the post of Head Constables. There is no requirement that a person should have experience on Head Constables only in the parent cadre. I do not find any merit in this Special Civil Application and the same is accordingly rejected.

... ..."

According to Mr.Sinha, when this Court also negatived such contention which was raised at the instance of the contesting rival Police Head Constables, there was absolutely no reason worth the name for the respondent No.2 subsequently to cancel the decision made by his predecessor as if he was reviewing that decision. It is stated by Mr.Sinha that when the selection of these very petitioners was upheld by this Court by rejecting the said Special Civil Application, it was not proper on the part of the respondent No.2 thereafter to cancel the selection of the present petitioners. This Court has specifically observed in the said order that the requisite qualification is certain experience on the post of Head Constables. There is no requirement that a person should have experience of Head Constable only in the parent cadre. Ultimately, therefore, this Court has upheld the selection of the present petitioners by dismissing the aforesaid Special Civil Application filed by the contesting rival candidates. It is, therefore, submitted by Mr.Sinha that when the petitioners have put in experience of more than five years as A.I.O., which is equivalent to Head Constable's rank, and even as per the order at Annexure `O', it is clear that a Head Constable who is on deputation and who has completed five years, can appear in the departmental examination, there is no

reason why the Department should not give posting orders to the petitioners.

8. As against that, Mr.Joshi, learned AGP, argued that since the promotions given to the petitioners as A.I.O. were fortuitous, they were required to be reverted to the parent cadre, and if they are to be reverted to the parent cadre, it would be as Constable and not as Head Constable. Mr.Joshi further submitted that since the petitioners have never got chance to be promoted as Head Constable in their parent cadre, naturally, they were not eligible to be promoted on the post of Police Sub Inspector. Mr.Joshi further submitted that, by mistake, the predecessor of the respondent No.2 allowed the petitioners to appear in the written and oral examinations. He further submitted that the D.S.P., Surendranagar also committed a mistake by stating that those who are on deputation are also allowed to appear in the examination meant for P.S.I. According to Mr.Joshi, only those Head Constables, who have completed five years' tenure as Head Constable in the State Service, were eligible as per Rules for promotion to the post of P.S.I. According to him, since the petitioners have never got chance of promotion as Head Constable in the parent cadre, they cannot take advantage of appointment / promotion to the post of A.I.O. in C.I.D. Therafter, by way of further affidavit-in-reply, practically at the time of conclusion of the arguments, he annexed the Recruitment Rules, entitled "Police Sub-Inspector (Unarmed Branch), Recruitment Rules, 1997", which were framed on 23rd October, 1997 in supersession of the earlier Rules of 1980 and 1994. The relevant rule reads as under :-

> " ... ...
>
> 2. Appointment to the post of Police Sub-Inspector (Unarmed Branch), Class-III, in the Gujarat State Police Service shall be made either -
>
> (i) by promotion of a person of proved merit and efficiency from amongst the persons who have worked for not less than five years in the cadre of Head Constable (Unarmed Branch, Grade-I) in the Gujarat State Police service :
>
> ... ..."

Therefore, by the said Rules, now, it is specifically provided that five years' experience in the cadre of Head Constable should be in the Gujarat State Police Service. According to Mr.Joshi, in view of these Rules of 1997, since the petitioners have not got head constables' experience in the Gujarat State Police Service, they are not eligible. According to him, therefore, the decision taken by the respondent No.2 was just and proper. However, so far as the amendment in the Recruitment Rules in the year 1997 is concerned, he fairly submitted that, of course, some of the candidates and even some of the petitioners were promoted even after the aforesaid amendment of 1997 on the basis of earlier selection process in which the present petitioners have participated. In fact, the posting order given to 342 candidates earlier were given on the basis of the selection process in which the petitioners appeared.

9. The main issue, which is required to be considered is whether the five years' experience which the petitioners have put in while serving as A.I.O. can be considered to be experience on the post of Head Constable. As observed earlier, this Court (Coram : N.N. Mathur, J.), while upholding the selection of the present petitioners and while dismissing the petition filed by one set of Constables, has, in terms, observed that there is nothing in the Rule to suggest that such five years' experience should be in the Parent Cadre.

Reference is required to be made to the additional affidavit-in-reply at page 72, which is a reply to the draft amendment. It is stated that as per the provisions of Rule 165(1) of the Gujarat Police Manual, five years' continuous service as Head Constable is the requisite eligibility criterion and that the petitioners, who are on deputation, cannot be considered to have discharged duties as Head Constable. However, it is required to be noted that so far as the reference regarding five years' experience as Head Constable is concerned, when the aforesaid Rules were in existence, there was no question of considering the experience on the post of A.I.O., as the said post came into existence later on when there was a reorganization of the C.I.D. Therefore, naturally, when Rule 165(1) was enacted, there was no such post of Assistant Intelligence Officer as the same was created in 1991. Under the aforesaid circumstances, when the constables and head constables were appointed to the post of Assistant Intelligence Officer and when as per the Recruitment Rules of the said post, which is at Annexure `D' dated 7.12.1991, it is clearly mentioned that the same is equivalent to Head

Constable Grade I, it can be said that so far as the post of A.I.O. is concerned, the said post is equivalent to the post of Head Constable Grade I. If that be so, then, naturally, the experience of a person on the aforesaid post of A.I.O. for more than five years can naturally be treated as experience as Head Constable. Mr.Joshi is not in a position to point out any provision which suggests that such experience must be in the parent cadre of the State and, therefore, for that purpose, subsequently, Rules were amended, to which I will refer later on. However, at the relevant time, when the applications were invited, when the recruitment process for the post of P.S.I. started and when the petitioners were allowed to appear in the written and oral examinations subsequently, it cannot be said that they were not eligible to appear for the said examination, simply because they were not having five years' requisite experience in the post of Head Constable Grade I. It is required to be noted that both the categories, viz., Head Constable Grade I and Grade II, were eligible to be promoted to the post of A.I.O., though Mr.Joshi submitted that normally Head Constable Grade I is appointed as I.O., and not Head Constable Grade II. It is not possible to believe that the reference in the letter at Annexure `O' that those who are serving as Head Constable on deputation and those who have completed five years on such deputation, are also allowed to appear in the P.S.I. examination is purely a mistake. According to the petitioners, no clarification was issued at any point of time and, ultimately, even on the basis of the said letter at Annexure `O', they were given to understand that they can appear in the examination, and on that basis, they continued on deputation. It is also not possible to believe that even at the second stage also, i.e. at the stage when they were asked to appear in the written examination, there was a mistake, and that, by mistake, they were asked to appear at the examination.

The fact remains that the present petitioners served continuously for more than five years as A.I.O., which is equivalent to Head Constable Grade I as per the Rules dated 7.12.1991, at Annexure `D' to the petition. It clearly stated that A.I.O. is equivalent to Head Constable Grade I and having completed five years' continuous service in the said cadre, ultimately, they were allowed to appear in the examination for P.S.I. It is not that he should have five years' experience in his parent cadre as a Head Constable Grade I and even service on an equivalent post of Head Constable Grade I will not be considered. It, therefore, cannot be said that there was any mistake committed by the earlier Officer, who

allowed the petitioners to appear in the written and oral examinations. It is only subsequently when the present incumbent took the charge that he cancelled the earlier process of selection of the present petitioners. It is doubtful whether as an Officer, holding the same rank, he could have reviewed the decision of his predecessor simply on the ground that the earlier Officer's interpretation of the Rules was not proper. It is also required to be noted that, ultimately, the petitioners have also completed the training and, as a matter of fact, some of the petitioners have also been subsequently promoted to the post of P.S.I., though, of course, the justification of the Government is that during the intervening period, they have also completed five years' tenure as Head Constable. It is also not possible to ignore the communication at Annexure `A', by which the petitioners were offered incentive by telling them that after five years' service on deputation, the incumbent will be permitted to appear in the Sub Inspectors' Examination. Therefore, I find considerable substance in the argument of Mr.Sinha for the petitioners that it was not necessary for the petitioners to have five years' experience in the parent cadre and having completed five years' experience as A.I.O., they were eligible for promotion to the post of P.S.I. and were entitled to appear for the said examination. As stated earlier, at the relevant time, as per the provisions of the Police Manual, which was prior to 1990, a reference of five years' experience in connection with Head Constable's post is made, but, so far as the post of A.I.O. (C.I.D.) is concerned, the said post came into existence subsequently in 1991, and, naturally, there was no mention about such post in the Manual. Therefore, naturally there was no reference of the post of A.I.O. in the Manual at the relevant time.

10. Now, so far as the reliance about Recruitment Rules of 1997 is concerned, which is placed on record by way of further affidavit, it was argued by Mr.Sinha that the aforesaid Rules came into force on 23rd October, 1997, whereas the process for recruitment started on 12th June, 1997, as per Annexure `F' and the written examination was held on 23rd October, 1997. It is also required to be noted that the entire list was prepared as per the prevailing Rules, and not as per the New Rules. As a matter of fact, even after the aforesaid Rules of 23rd October, 1997, appointments were made in favour of some of the candidates, who were not having five years' experience in the parent cadre, i.e. appointments were made on the basis of the earlier Rules and, therefore, no different treatment can be meted out to the petitioners

on the ground that in view of the 1997 Rules, they are not eligible when the department itself gave benefit to some of the candidates as per the earlier Rules and appointments have been made. The Department, in fact, for all practical purposes, relied upon the earlier prevailing Rules and the provisions in the Manual for making appointment to the post of P.S.I. Therefore, considering the aforeaid fact, it is not open for the State to deny them the benefit of appointment as the State, at no point of time, has ever asserted that the petitioners are not eligible to be appointed as per the New Rules.

11. Mr.Joshi, learned AGP, has relied upon the judgment of the Apex Court in State of M.P. and Ors. v. Raghuveer Singh Yadav and Ors., 1994(5) SLR 176. In paragraphs 3 and 4 of the said judgment, it has been held by the Supreme Court as under :-

> " ... ...
>
> 3. This appeal arises from the order of the M.P. Administrative Tribunal, Jabalpur in O.A. No.2484/89, dated October 12, 1993 directing the appellant to proceed with the selection of the candidates without taking into account the amendment made to the Rules, introducing the B.Sc. as a qualification for consideration of the applications of candidates. The facts lie in a short compass :
>
> For recruitment to the posts of Inspectors, Department of Weights and Measures in the State of M.P., an advertisement was issued on July 27, 1987, calling for applications from eligible candidates. The qualification prescribed for eligibility was decree in Arts or Commerce or Science or Engineering or Diploma in Engineering. It would appear that written examinations were held and results were declared on August 26, 1989. Therafter, the Board issued interview cards to the successful candidates. In the meanwhile, the Government amended the Rules by M.P. Standard of Weights and Measurement (Enforcement) Rules, 1989 in consultation with Government of India and Public Service Commission and altered the eligibility qualification for appointment

to those posts by presenting degree in Science with Physics as a subject or Degree in Engineering or Technology or Diploma in Engineering. The respondents challenged the Amended Rules on the ground that having issued the Notification for filling up the posts of Inspectors with Degree of Arts and Commerce the State had to proceed with the recruitment only as per the qualification prescribed in the Notification and the subsequent amendment to the Rules should not stand in the way of the Recruitment Board to consider the claims on the basis of marks secured in the examination and also interview to be held. In other words, the amended rules have no retrospective operation. This contention was found favour with the Tribunal and accordingly the Tribunal allowed the application.

4. It is not in dispute that Statutory Rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualifications for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to Amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended rules.

... ..."

Mr.Joshi, therefore, argued that the petitioners

have not got any vested right simply because they have passed out the written and oral tests and, at the most, they can have legitimate expectation to be considered for appointment to the said post and accordingly, when the Rules were changed before their appointment, the petitioners cannot get any right for appointment to the said post.

12. Mr.Joshi has further relied on the decision of the Apex Court in Rajasthan Public Service Commission v. Chanan Ram and another, (1998) 4 SCC 202. In the aforesaid case, a candidate had applied for one of the advertised posts of a direct recruit on the post of Assistant Director (Junior). However, three days prior to the last date for submission of the applications, the State of Rajasthan asked the Rajasthan P.S.C. not to go ahead with the recruitment process as the relevant recruitment rules were sought to be amended. The result was that after the expiry of the last date for submission of the applications from the eligible candidates, the proceedings remained dormant and the Rajasthan Public Service Commission did not proceed further in the matter and in the meanwhile, the recruitment rules were amended and subsequently, fresh requisition for 26 posts was issued for the post in question. Therafter, the original writ petitioner, who had filed the writ petition in the Rajasthan High Court also applied on the basis of fresh advertisement once again and he was asked to appear in the screening test. At that stage, he filed a writ petition in the Rajasthan High Court placing his case for selection on the basis of earlier advertisement, wherein 23 posts were advertised. Considering the aforesaid background of the facts of the case, it was observed in paragraph 13 as under :-

> " ... ...
>
> Even if the earlier advertisement had been proceeded with, it would have resulted in an exercise in futility. No appointment could have been given to the selected candidates to the posts of Assistant Director (Junior) after 1995 amendment of the rules because there were no such posts in the hierarchy of State service. It has therefore, to be held that on account of the amendments to the recruitment rules, the earlier advertisement became infructuous and otiose.

... ..."

It has also been observed in paragraph 17 as under :-

" ... ...

In the case of State of M.P. v. Raghuveer Singh Yadav, a Bench of two learned Judges of this Court consisting of K. Ramaswamy and N. Venkatachala, JJ. had to consider the question whether the State could change a qualification for the recruitment during the process of recruitment which had not resulted into any final decision in favour of any candidate. In paragraph 5 of the Report in this connection it was observed that it is settled law that the State has got power to prescribe qualification for recruitment. In the case before the Court pursuant to the amended Rules, the Government had withdrawn the earlier notification and wanted to proceed with the recruitment afresh. It was held that this was not the case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered according to the rules then in vogue. The amended Rules had only prospective operation. The Government was entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State was entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules. In the case of J&K Public Service Commission v. Dr.Narinder Mohan another Division Bench of two learned Judges of this Court consisting of K. Ramaswamy and N.P. Singh, JJ. considered the question of interception of recruitment process earlier undertaken by the recruiting agency. In this connection it was observed that the process of selection against existing and anticipated vacancies

does not create any right to be appointed to the post which can be enforced by a mandamus. It has to be recalled that in fairness learned Senior Counsel, Shri Ganpule for the respondent-writ petitioner, stated that it is not his case that the writ petitioner should be appointed to the advertised post. All that he claimed was his right to be considered for recruitment to the advertised post as per the earlier advertisement dated 5.11.1993 Annexure P-1 and nothing more. In our view, the aforesaid limited contention also, on the facts of the present case, cannot be of any assistance to the writ petitioner as the earlier selection process itself had become infructuous and otiose on the abolition of the advertised posts, as we have seen earlier. The second point, therefore, will have to be answered in the negative in favour of the appellants and against the respondent-writ petitioner.

... ..."

13. Mr.Joshi has also relied upon the decision of the Apex Court in Jai Singh Dalal and others v. State of Haryana and another, 1993 Supp (2) SCC 600, wherein the Supreme Court has observed in paragraph 7 as under :-

" ... ...

The law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection according to revised criteria. In the present case, the selection was yet to be made by the commission. Therefore, the petitioners cannot even claim that they were selected for appointment by the Commission. The selection process had not been completed and before that, the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. No right of petitioners has been violated.

... ..."

Mr.Joshi, however, fairly conceded that after 23.10.1997 also, promotions on the post of P.S.I. are given as per old Rules and as per the relevant provisions of the Manual prevailing at the relevant time. He submitted that, however, promotion in favour of those candidates, no doubt, were given, but they were having five years' experience as Head Constable, though they were not in the State Service. However, in my view, the said aspect is besides the point. Even after the new Rules, as per the say of the learned AGP, promotions were given to those who were not serving in the State Police Service and in my view, no different treatment could have been given to the present petitioners.

14. As against the aforesaid argument of Mr.Joshi, so far as applicability of the Rules of 1997 is concerned, Mr.Sinha submitted that the instant case is one of promotion and not appointment. For getting appointed, one may not have substantive right, but the same criterion may not be applicable so far as the question of promotion is concerned. He submitted that, in any case, when the Department itself has relied upon the earlier Rules for promotion regarding some of the present petitioners, no different treatment can be given by the Department by relying upon the 1997 Rules, which is only an afterthought. Reference to the said Rules of 1997 was made practically at the time of conclusion of the hearing of the matter. Even when the question of sending the candidates for training arose, it was never said by the Department that as per the New Rules, the petitioners were not eligible. Not only that, on the basis of such completion of training, promotion orders have been given in favour of others and, therefore, the Government should not discriminate the petitioners from getting the said benefit.

15. Mr.Sinha has relied upon the decision of the Honourable Supreme Court in B.L. Gupta and another v. M.C.D., (1998) 9 SCC 223. It has been observed by the Honourable Supreme Court in paragraphs 9 and 11 as under :-

> " ... ...
>
> 9. When the statutory rules had been framed in 1978, the vacancies had to be filled only according to the said Rules. The Rules of 1995 have been held to be prospective by the High Court and in our opinion this was the correct conclusion. This being so, the question which arises is whether the vacancies which had arisen

earlier than 1995 can be filled as per the 1995 Rules. Our attention has been drawn by Mr.Metha to a decision of this Court in the case of N.T. Devin Katti v. Karnataka Public Service Commission. In that case after referring to the earlier decisions in the cases of Y.V. Rangaiah v. J. Sreenivasa Rao, P. Ganeshwar Rao v. State of A.P. and A.A. Calton v. Director of Education, it was held by this Court that the vacancies which had occurred prior to the amendment of the Rules would be governed by the old Rules and not by the amended Rules. Though the High Court has referred to these judgments, but for the reasons which are not easily decipherable its applicability was only restricted to 79 and not 171 vacancies, which admittedly existed. This being the correct legal position, the High court ought to have directed the respondent to declare the results for 171 posts of Assistant Accountants and not 79 which it had done.

... ...

11. We are informed at the Bar by Dr.Singhvi, on the basis of instructions received by him, that now there are about 323 posts of Assistant Accountants. Out of these about 80 have been filled on the basis of the December, 1993 examination. The respondents are directed to fill 91 more vacancies on the basis of December 1993 examination which they have already conducted. This will leave a balance of 152 vacancies. The number of persons who are holding these posts on current duty charge appears to be less than the number of vacancies so available. Therefore, there will be no immediate danger of Mr.Sanghi's clients being reverted to the post of Senior Clerks. The respondents will be at liberty to continue to retain them in the higher post, but it is made clear that the vacancies which had arisen prior to amendment of the Rules in 1995 can only be filled in accordance with the 1978 Rules, which means that if Mr.Sanghi's clients want to be regularly appointed as Assistant Accountants, they will have to

compete with and take the examination under the 1978 Rules. This is with regard to the vacancies which remain and are required to be filled under the 1978 Rules. Any vacancies which arise after 1995 will have to be filled as per the amended Rules. It is but obvious that the seniority in all these cases will have to be fixed according to the seniority rules which are applicable.

... ..."

16. Mr.Sinha has also relied upon the decision in P. Mahendran and others v. State of Karnataka and others, (1990) 1 SCC 411. It has been observed by the Honourable Apex Court as under :

" ... ...

Every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in a language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure.

... ..."

Mr.Sinha has also relied upon the decision of the Honourable Supreme Court in Union of India and others v. Tushar Ranjan Mohanty and others, (1994) 5 SCC 450 to substantiate his case that in the case of promotion, there is a substantive right accrued in favour of a person, which cannot be denied by amendment. It has been observed in paragraphs 14 and 15 as under :-

" ... ...

The legislature and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This

> power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.
>
> ... ...
>
> The retrospective operation of the amended Rule 13 cannot be sustained. The retrospective amendment of Rule 13 takes away the vested right of Respondent 1 and other general category candidates senior to respondents 2 to 9. Therefore, Rule 13, to the extent it has been made operative retrospectively, is unreasonable, arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. The retrospective operation of the rule has to be struck down.
>
> ... ..."

Relying on the same, Mr.Sinha argued that when his right to be promoted had already accrued on his passing the examination, subsequently, that right cannot be taken away by relying upon the new enactment, especially when similarly situated persons were given promotion as per the old Rules.

17. Mr.Sinha has, therefore, argued that not only applications were invited, but, thereafter, it was followed by written examination and subsequently, what remained was oral test and training and when at that stage, the new Rules came into picture, the same cannot made applicable as the selection process was practically over. He further submitted that all the petitioners have also completed training and now, only few petitioners are left out from getting benefit of appointment to the post of P.S.I. He, therefore, submitted that there is no justification on the part of the State to deny their just claim.

18. Considering the aforesaid facts and circumstances of the case, therefore, I am of the opinion that when the Department itself has proceeded in the matter of issuing promotional orders on the basis of the selection process,

which has started as per the relevant provisions in the Manual and even after the rule of 1997 came into picture, orders have been given as per the earlier Rule, no different treatment can be given to the present petitioners. It is required to be noted that ultimately if Mr.Joshi's contention is upheld, then all Head Constables Grade II who have been also promoted on the basis of the aforesaid selection, cannot be said to be eligible for appointment for the post in question. It is not in dispute that those Constables Grade II who have completed five years' experience have, in fact, been promoted even though, as per the Rules of 1997, only Head Constables who are in Grade I are eligible and Head Constable Grade II are not eligible as per the Rules. However, the Department has followed the old Rules for making appointment to the post of P.S.I. Therefore, it seems that, rightly, the said contention was never taken earlier when replies were filed. In any case, in view of the aforesaid fact, the respondents cannot deny the benefits to the present petitioners on the ground that they are not eligible as per the 1997 Rules, especially when the Department itself has followed the old Rules for making appointment. Therefore, once the petitioners have undergone written test and oral test, along with the similarly situated candidates, the said benefit should be given to the petitioners without resorting to the Rules of 1997.

19. Considering the matter from the aforesaid angle, I am of the opinion that when the post of A.I.O. was treated as equivalent to Head Constable Grade I and when the petitioners have continued for more than five years and it is not necessary that they should have that experience only in the parent cadre, they were entitled for consideration for promotion to the post of P.S.I. and accordingly, the petitioners were rightly called for written test and oral test. Since it is not in dispute that they have successfully come out in both the tests and ultimately, they have completed the training as per the interim order of the High Court, they are entitled to get similar treatment, like others, who were also given posting orders on the post of P.S.I., as, in my view, they were eligible to appear in the examination at the relevant time for P.S.I's examination, as they have completed five years' service in the cadre of Head Constable. Under these circumstances, the petition is required to be allowed and it is accordingly allowed. Rule is made absolute with no order as to costs. Since the petitioners have already been selected, now the only relief which is required to be given is regarding giving posting orders to them. The respondents are accordingly

directed to give posting orders of the petitioners on the post of P.S.I. within a period of four weeks from today.

July 20, 2001. (P.B. Majmudar, J.)

****

(apj)